

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAQUELINE V. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 99-2284; Submitted on the Record;
Issued September 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury while in the performance of duty.

On June 26, 1998 appellant, a 43-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a back injury while in the performance of duty. Appellant explained that she first became aware of her condition on March 27, 1998 and she realized it was employment related on April 6, 1998, when her "back pain became unbearable" and she sought medical treatment. Appellant ceased work on April 7, 1998 and returned to work on June 2, 1998.

The employing establishment controverted appellant's claim on the basis that she had previously filed a similar claim for a traumatic back injury, which allegedly occurred on April 6, 1998 as a result of working outside of her medical restrictions. The employing establishment further noted that the prior claim (A25-0522464) had been denied by the Office of Workers' Compensation Programs on June 18, 1998.¹ Additionally, the employing establishment characterized appellant's recent filing on Form CA-2 as merely a "follow up attempt ... to get her claim for injury accepted." It was also noted that appellant had not submitted any medical evidence in support of her claim.

By letter dated September 16, 1998, the Office requested that appellant submit additional factual and medical information within 30 days. In response, the Office received a brief statement from appellant explaining how she aggravated her back on April 6, 1998. Appellant also submitted a September 25, 1998 radiology report indicating the presence of minimal disc bulging at L5-S1 and minor facet degenerative changes at L4-5.

¹ In its June 18, 1998 decision, the Office denied appellant's claimed traumatic back injury on April 6, 1998 because she failed to establish that her injury occurred at the time, place and in the manner alleged.

In a decision dated October 19, 1998, the Office denied appellant's claim on the basis that she failed to establish that she sustained an injury as alleged.

On April 26, 1999 appellant filed a request for reconsideration accompanied by additional medical evidence from her treating physician, Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon. In a merit decision dated June 23, 1999, the Office denied modification of the October 19, 1998 decision.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by appellant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.²

In reviewing the medical evidence submitted by appellant in conjunction with her April 26, 1999 request for consideration, the Office correctly noted that Dr. Jackson's various reports consistently referred to an April 6, 1998 employment incident as being the source of appellant's current back complaints.³ Thus, while the instant claim was filed for an occupational disease, the medical evidence of record relates to a claim for a traumatic injury occurring on April 6, 1998.⁴ The record indicates that appellant had previously filed a claim for an April 6, 1998 traumatic back injury which was denied. The Board finds in the present case that the medical evidence of record fails to establish that appellant sustained an occupational disease, as that term is defined under 20 C.F.R. § 10.5(q), the Office properly denied appellant's claim for compensation.

² *Id.*

³ In his initial report dated July 10, 1998, Dr. Jackson noted complaints of "continued upper and lower back pain since an episode at work on [April 6, 1998]." He further indicated that appellant "was doing a lot of bending and lifting" and "[t]he pain started that day" and "worsened over the next several days." In his five subsequent reports, Dr. Jackson continually noted that he was treating appellant for "conditions caused by work injury of [April 6, 1998]."

⁴ The regulations define an "*Occupational disease or illness*" as "a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q). A "*Traumatic injury*" is defined as "a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift." The condition "must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected." 20 C.F.R. § 10.5(ee).

The June 23, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member